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90-316 (1)

NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

DAN M. LINKOUS

PETITIONER

v.

PETER JOHNSON

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

DAN M. LINKOUS
PETITIONER, PRO SE
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QUESTIONS PRESENTED

1. Has the Fifth Circuit Court of Appeals departed from the accepted and usual course and rendered a decision in conflict with prevailing decisions of other courts of appeals in denying Petitioner's "Request for Reconsideration" after determining they lacked jurisdiction over matters appealed from U.S.D.C. Southern District of Texas, Houston Division, "ORDER" denying Petitioner's "Request for Extension of One Day" to file Petitioner's "Notice of Appeal?"

2. Did the Fifth Circuit Court of Appeals act prematurely in rendering its "REMAND" to the U.S.D.C. which denied Petitioner's "Request for Extension of One Day" and "Notice of Appeal" for entry of written reasons by U.S.D.C. presiding judge when F.R.A.P. 10, 11, and 12 had not been complied with by the U.S.D.C. Clerk's Office and Court Reporters service's failure to appropriately handle the "Record on Appeal?"

3. Did the Fifth Circuit Court of Appeals abuse its discretion by denying Petitioner's "Reconsideration Request" of the Fifth Circuit's denial of Petitioner's "Notice of Appeal" and "Request for Extension of One

Day's Time" in order to dismiss overwhelmingly meritorious issues that were embarrassing and incriminating to the U.S.D.C. Clerk's Office and presiding judge's "blatant errors and intentional cover-up" of Petitioner's consolidated appeals which were so badly handled by the U.S.D.C. Clerk's Office and presiding judge?

LIST OF ALL PARTIES

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TABLE OF CONTENTS

PAGE

QUESTIONS PRESENTED i

LIST OF ALL PARTIES iii

TABLE OF CONTENTS iv

TABLE OF AUTHORITIES viii

OPINIONS BELOW 2

JURISDICTION 3

STATUTES AND RULES INVOLVED 5

STATEMENT OF THE CASE 7

REASONS FOR GRANTING THE WRIT 13

1. INTRODUCTION 13

2. THE FIFTH CIRCUIT COURT OF APPEALS DECISION TO DENY PETITIONER'S "RECONSIDERATION" OF PETITIONER'S "NOTICE OF APPEAL" AND "REQUEST FOR EXTENSION OF ONE DAY'S TIME" BY INDICATING IT LACKED JURISDICTION OVER THOSE MATTERS IS IN CONFLICT WITH AND HAS DEPARTED FROM THE PREVAILING THOUGHT AND INTERPRETATION OF APPLICABLE STATUTES AND CASE LAW ALLOWING 60 DAYS FOR FILING "NOTICE OF APPEAL" WHEN U.S. GOVERNMENT OFFICIALS ARE INTRICATELY INVOLVED IN THE MATTERS APPEALED FROM U.S.D.C. TO CIRCUIT COURT OF APPEALS 21

3. THE FIFTH CIRCUIT COURT OF APPEALS PREMATURELY CONSIDERED

AND "REMANDED" TO U.S.D.C. PETITIONER'S "REQUEST FOR EXTENSION OF ONE DAY'S TIME" TO ENTER WRITTEN REASONS FOR THE U.S.D.C. "GENERIC DENIAL" OF PETITIONER'S "APPEAL AND REQUEST FOR EXTENSION" BEFORE F.R.A.P. 10, 11, AND 12 COULD BE COMPLIED WITH BY U.S.D.C. CLERK'S OFFICE TO ENSURE PREJUDICE AND DAMAGE TO PETITIONER'S MATTERS ON APPEAL AND TO CONTINUE THE SUBTERFUGE OF ADDRESSING A "REQUEST FOR EXTENSION OF ONE DAY" WITH DISREGARD TO THE "APPEAL" REFUTES PROCEDURAL, ADMINISTRATIVE, AND TECHNICAL PROPRIETY 23

4. THE FIFTH CIRCUIT COURT OF APPEALS ABUSED ITS DISCRETION IN DISMISSING THE "REQUEST FOR RECONSIDERATION" OF PETITIONER'S ATTEMPT TO REINSTATE WRONGFUL DISMISSAL ON TECHNICALITY AND PROCEDURE WHICH WERE MISREPRESENTED BY U.S.D.C. CLERK'S OFFICE AND PRESIDING JUDGE TO HIDE THE OVERWHELMING MERIT OBVIOUS IN THESE APPEALS WHICH WERE EMBARRASSING AND INCRIMINATING BY THEIR OBVIOUS PREMEDITATED ADMINISTRATIVE AND PROCEDURAL MISHANDLING DEFECTS 32

CONCLUSION 36

TABLE OF CONTENTS - continued PAGE

APPENDIX . . . . . .

A - Order of the Fifth Circuit Court of Appeals, March 28, 1990 1

B - (EXCERPT) Petitioner's "Request for Reconsideration" 2

C - Opinion and Judgment of the Fifth Circuit Court of Appeals, January 29, 1990 . 6

D - U.S.D.C. Order, December 4, 1989 7

E - November 8, 1989 Fifth Circuit Court of Appeals Case Manager Correspondence to U.S.D.C. Clerk's Office 10

F - January 8, 1990 Fifth Circuit Court of Appeals Clerk Correspondence to U.S.D.C. Clerk 12

G - Opinion and "REMAND" to U.S.D.C. by Fifth Circuit Court of Appeals, November 8, 1989 13

H - November 29, 1989, Fifth Circuit Court of Appeals Case Manager Correspondence to U.S.D.C. Court Reporter 16

I - U.S.D.C. "ORDER" of September 12, 1989 . . 18

J - U.S.D.C. "ORDER" of June 26, 1989 19

K - U.S.D.C. "ORDER" of June 5, 1989 20

L - Humble Express Courier Affidavit 22

M - U.S.D.C. "Status Hearing," January 7, 1989 23

TABLE OF CONTENTS - continued PAGE

N - U.S.D.C. Receipt of January 17, 1989, Transcript on date March 29, 1990 24

O - U.S. Bankruptcy Court "Nunc Pro Tunc ORDER," August 9, 1987 25

P - U.S. Bankruptcy Court "ORDER on Sanctions" of August 7, 1987 27

Q - U.S. Bankruptcy Court "Agreed Judgment" of November 25, 1987 33

R - U.S. Bankruptcy Court "ORDER for Witness Fees" of October 8, 1987 45

S - U.S.D.C. "ORDER" and "Final Judgment" of January 20, 1989 46

T - U.S. Bankruptcy Court "Motion to Disqualify . . . Impose Sanctions" 49

TABLE OF AUTHORITIES

CASES	PAGE
Rochester Methodist Hospital v. Travelers Ins. Co., (CA 8th, 1984) 728 F.2d, 1006	22
In Re Paris Air Crash of March 3, 1974, (CA 9th, 1978) 578 F.2d, 264	22
U.S. v. American Society of Composers, Authors, and Publishers, (CA 2d, 1964) 331 F.2d, 117, Cert. denied (1964) 377 U.S. 997, 84 S. Ct. 1917, 12 L.Ed.2d 1048	21
Hare v. Hurwitz, (CA 2d., 1957) 248 F.2d., 458	22
Wallace v. Chappell, (CA 9th, 1981) 637 F.2d, 1345	22
U.S. v. McKnight, (CA 9th, 1979) 593 F.2d, 230	23
Business Forms Finishing Service, Inc. v. Carson, 463 F.2d, 966(7) (Cir. 1971).....	29
Schacht v. U.S., 1970, 90 S. Ct. 1555, 1559, 348 U.S. 58, 64, 26 L.Ed.2d 44	26
Feder Line Towing Service, Inc. v. Toledo P.& W.R.R. Co. (CA 7th, 1976) 539 F.2d 1107, 1109	27
Stirling v. Chemical Bank, (CA 2d., 1975) 511 F.2d, 1030	27
Davis v. Page, (CA 5th, 1980) 618 F.2d 374, 378 On Rehearing 1981, 640 ..... F.2d 599	28
Sprout v. Farmer's Inc. Exchange (CA 9th, 1982) 681 F.2d 587, 588.....	

TABLE OF AUTHORITIES - continued

CASES

Campos v. Lefevre, (CA 2d, 1987) 825 F.2d 671 28

U.S. v. Atkinson, (CA Fed. 1984) 748 F.2d 659, 661 .....

Shah v. Hutto, (CA 4th, 1983) 722 F.2d 1167, Cert. Denied 104 S. Ct. 2354, 466 U.S. 975, 80, L.Ed.2d 827 28

Pryor v. Marshall, (CA 6th, 1983) 711 F.2d 63, 64-65 n.4..... 28

Fallen v. U.S., 1964, 84 S. Ct. 1689, 378 U.S. 139, 12 L.Ed.2d 760..... 28

Moore v. Nelson, (CA 2d., 1979) 611 F.2d 434, 436 n.4 .....

Birl v. Estelle, (CA 5th, 1981) 660 F.2d. 592 1

Pellegrino v. Marathon Bank, (CA 5th, 1981) 640 F.2d 696 .....

In Re Combined Metals Reduction Company, Debtor Irving Bennett, Appellant v. Paul Gemmill, Trustee, Appellee 557 F.2d 179 (1977) U.S. 9th Cir..... 2

In Re Lloyd, Carr, and Company, 617 F.2d 882 (1980) U.S. First Cir. .....

Taylor v. S&D Enterprises, Ltd., 601 F.2d 175 (1979) U.S. 5th Cir. .....

Pryor v. U.S. Postal Service, 769 F.2d 281 (1985) U.S. 5th Cir. 1

Foman v. Davis, Supra 371 U.S. at 182(1962)... 3

TABLE OF AUTHORITIES - continued

CASES	PAGE
Kicklighter v. Nails by Jennee, Inc., 616 F.2d 734, 738 n.1 (5th Cir. 1980)	30
Cole v. Tuttle, 540 F.2d 206 (5th Cir. 1976)	
U.S. v. Golding, 739 F.2d 183 (5th Cir)	31
Blum v. Gulf Oil Corp., 597 F.2d 936 (5th Cir. 1979)	
Jones v. Caddo, Parish School Bd., 421 F.2d 313, 315 (5th Cir. 1970).....	
Gribble v. Harris, 625 F.2d 1173, 1174 (5th Cir. 1980)	23
Turner v. HMH Publishing, 328 F.2d 136 (5th Cir. 1964)	31
Chipser v. Cohlmeyer & Co., 600 F.2d 1061, 1063 (5th Cir. 1979)	
U.S. v. Miller, 666 F.2d 991, 993 (5th Cir. 1982)	31
Smith v. Jackson Tool & Dye, Inc., 426 F.2d 5 (5th Cir. 1970)	31
Harcon Barge Co. v. D&G Boat Rentals, Inc., 746 F.2d 278 (5th Cir. 1984).....	31

UNITED STATES CONSTITUTION

amendment five
amendment fourteen

FEDERAL STATUTES

	PAGE
28 USC 1254(1)	4
28 USC 1291	4
28 USC 1294(1)	4
28 USC 1334	5
28 USC 1471(a)	5
28 USC 1472(1)	5
28 USC 1409	5

FEDERAL RULES OF APPELLATE PROCEDURE

Rule 3(a)	26,31
Rule 3(b)	26,31
Rule 4(a)(1)	23
Rule 4(a)(4)	5,21,23
Rule 10	5,25,10,19
Rule 11	25,26,6,10
Rule 12	25,26,10,19
Rule 31	

FIFTH CIRCUIT LOCAL RULE

Rule 10.2	5,25
Rule 11.1	6,25,26
Rule 11.2	6

TREATISES

Miller, Wright & Cooper, Federal Practice and Procedure, Section 3950 at 360-444 (1984)	26
9 Moore's Federal Practice	
Section 204.10 at 4-34 to 4-39 (1989)	21
Section 210.03	25
Section 211.05	26
Section 211.12	
Section 226.02	
Appeals to the Fifth Circuit (Issue 4, 1989) at Chapter 4, p. 1-41	30

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

DAN M. LINKOUS

PETITIONER

v.

PETER JOHNSON

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner Dan M. Linkous, pro se, petitions for Writ of Certiorari to review the Judgment and Order of the United States Court of Appeals for the Fifth Circuit, entered March 28, 1990, denying Reconsideration of Petitioner of Fifth Circuit Court of Appeals Opinion Judgment dismissing appeals entered January 29, 1990, affirming the "ORDER" of U.S.D.C. Southern District of Texas, Houston Division, entered December 4, 1989,

dismissing Petitioner's Appeal and "Request for Extension of One Day of Time to File Appeal."

OPINIONS BELOW

The denial by the Fifth Circuit Court of Appeals of Petitioner's Motion for Reconsideration entered March 28, 1990, is set forth in Appendix at p. 1 . The opinion of the Fifth Circuit Court of Appeals entered January 29, 1990, dismissed Petitioner's appeals, stipulating their lack of jurisdiction over these matters and is found in Appendix at p. 5 . The "ORDER" of the U.S.D.C. entered December 4, 1989, denying Petitioner's "Extension of One Day's Time to File Notice of Appeal" with alleged written reasons denying such request is found in Appendix at p. 7 . The Fifth Circuit Court of Appeals opinion entered November 8, 1989, remanding the case to the U.S.D.C. for entry of written reasons for denial of Petitioner's Motion for Extension of One Day's Time to File Notice of Appeal is in Appendix at p. 13 . The U.S.D.C. "ORDER" denying Petitioner's "Extension of One Day's Time to File Notice of Appeal" entered September 12, 1989, is in Appendix at p. 18 . The U.S.D.C. "ORDER" entered June 26, 1989, denying Pe

tioner's "Request Reconsideration" of U.S.D.C. dismissal of Petitioner's appeals is in Appendix at p. 19 . The U.S.D.C. "ORDER" of June 5, 1989, dismissing Petitioner's appeals in their entirety is in Appendix at p. 20 . The U.S. Bankruptcy Court "Nunc pro Tunc ORDER" entered August 9, 1987, is in Appendix at p. 25. The U.S. Bankruptcy Court "ORDER on Sanctions" entered August 7, 1987, is in Appendix at p. 27 . The U.S. Bankruptcy Court "Agreed Judgment" entered November 25, 1987, is in Appendix at p. 33 . The U.S. Bankruptcy Court "ORDER for Witness Fees" entered October 8, 1987, is in Appendix at p. 45 . The U.S.D.C. "ORDER" of January 20, 1989, is in Appendix at p. 46 . The U.S.D.C. "Final Judgment" entered January 20, 1989, is in Appendix at p. 48 .

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit denied Petitioner's "Request for Reconsideration" of Petitioner's "Notice of Appeal" and "Request for Extension of One Day's Time to File Appeal" which was dismissed by the Fifth Circuit Court of Appeals by "opinion" stating "lack of jurisdiction"

therefore allowed to stand U.S.D.C. Southern District of Texas, Houston Division's dismissal of Petitioner's "Appeal" and "Extension of One Day's Time to File Notice of Appeal" stipulating that Petitioner's "Notice of Appeal" was untimely filed and no "excusable neglect" was allegedly shown by Petitioner to preclude U.S.D.C. dismissal of case. This denial of "reconsideration" was entered March 28, 1990; the 90th day after denial of rehearing was June 26, 1990. On June 26, 1990, Justice White granted an extension of time until July 26, 1990, to file this Petition for Writ of Certiorari. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. Section 1254(1).

Below Petitioner appealed from U.S. Bankruptcy Court, Southern District of Texas, Houston Division, to U.S.D.C. four (4) Bankruptcy orders which were consolidated by the U.S.D.C. and dismissed by "ORDER" entered June 5, 1989, stipulating failure to timely designate the record and failure to not exceed 40 pages in Appellant's brief as the rationale for dismissal of appeals. Jurisdiction of Fifth Circuit Court of Appeals is pursuant to 28 USC 1291, 1293(b) and 1294(1). The

U.S.D.C. jurisdiction and venue is pursuant to 28 USC 1334(a), 1408(1), and 1409(a). The U.S. Bankruptcy Court jurisdiction and venue is pursuant to 28 USC 1409 concerning Title 11, 28 USC 1471(a), 1471(c), 1472(1), 1473, and 1482.

STATUTUES AND RULES

F.R.A.P. 4 (a)(1) states in part "but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within the sixty (60) days after such entry." F.R.A.P. 4 (a)(5) states "The district court, upon showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than thirty (30) days after the expiration of the time prescribed by this Rule 4 (a)(5)."

F.R.A.P. 10 (b)(4) states in part " a party must make satisfactory arrangements with the reporter for payment of the cost of the transcript." F.R.A.P. 10 (a) states what constitutes the complete record inclusive of "the transcript of proceedings."

F.R.A.P. 11 (b) states "if the transcript cannot b completed thirty (30) days of receipt of the orde the reporter shall request an extension of time fro the clerk of the Court of Appeals"... "failure o the reporter to file the transcript within the tim allowed, the clerk of the Court of Appeals sha notify the district judge and take such other ste as may be directed by the Court of Appeals." L. 11.2 states "It is the responsibility of the cle of the district court to determine when the reco on appeal is complete for purposes of appeal."

STATEMENT OF THE CASE

1. Petitioner filed Chapter 11 Bankruptcy July 2, 1984, and converted to Chapter 7 on July 23, 1985; in an adversary hearing of the Trustee v. Petitioner (Debtor) arose four (4) orders from the U.S. Bankruptcy Court ("ORDER for Witness Fees" {App. 45 }, "Agreed Judgment" {App. 33 }, "Order on Sanctions" {App. 27 }, and "Nunc pro Tunc ORDER" {App. 25}) which were timely and appropriately appealed by Petitioner-Debtor to U.S.D.C. and after assignment to two previous judges, they assigned to the U.S.D.C. Presiding Judge Ken Hoyt, who held on January 17, 1989, a pre-trial hearing in the U.S.D.C. court wherein certain prerequisites regarding the procedures and logistics of the record and filing of appeal briefs occurred (App. 23) ; also, two of the four appeals already consolidated were consolidated with the two remaining appeals by the presiding judge because of the co-mingled and unintelligible "Appeal Files."

2. Petitioner-Appellant timely served "New Designation of Record" on Appellee, Trustee Attorney and timely filed his Appellant's Brief. Filing of a single brief or briefs on each appeal was allowed and limited to

40 pages which Appellant interpreted to mean for each appeal; the individual appeals as was the main bankruptcy and several adversary cases spanned a significant time and consisted of voluminous documents. The issues to be addressed in the appeal of the "Agreed Judgment" from U.S. Bankruptcy Court to U.S.D.C. was complex and consisted of extensive records, briefs, memoranda, etc. The mishandling of the "Appeal Files" by the U.S.D.C. Clerk's Office rendered the "Appeal of Order on Witness Fees" a non-entity; the appeal documents were "lost" by the U.S.D.C. Clerk's Office and bankruptcy main case, adversary cases, and other unrelated case documents were substituted in that appeal file. A bankruptcy document (App. 46) was interpreted by U.S.D.C. Presiding Judge Hoyt to be the appeal of "Order on Witness Fees" (App. 45), and this case was dismissed without any of its documents present in its alleged file. Subsequently, the documents in that appeal file (notedly) were transferred by the U.S.D.C. Clerk's Office back to their appropriate files but the U.S.D.C. Presiding Judge refused to clarify or redress that dilemma.

3. On March 28, 1989, Petitioner filed Appellant's Brief with U.S.D.C. after having served timely Trustee Attorney "New Designation of Record." After no Appellee's Brief or other Appellee, the U.S.D.C. Presiding Judge on June 2, 1989, dismissed all Petitioner's appeals entering such order June 5, 1989 (App. 20). The rationale of failure to timely serve "New Designation of Record" on Trustee Attorney and failure to not exceed 40 pages in Appellant's Brief was the basis of dismissal. Petitioner filed June 16, 1989, "Appellant's Request for Reconsideration" (omitted) including affidavit of Humble Express Courier (App. 22) with exhibits indicating timely service of "New Designation of Record." Petitioner's "Request for Reconsideration" (omitted) also stipulated that the transcription of Statement of Facts of the January 17, 1989, U.S.D.C. "Pre-trial Hearing," which had been appropriately requested and paid for, had not been delivered by the Court Reporter, precluding "proving up" the actual statements made concerning the number of pages for "each" or "both" appeal briefs. On June 26, 1989, U.S.D.C. Presiding Judge entered a denial

(App. 19) to Petitioner's "Request for Reconsideration" generically without written reasons for such action.

4. Petitioner filed "Appellant's Notice of Appeal" July 27, 1989, after having mismarked his calendar for 30-day due date because of extenuating circumstances. On July 28, 1989, Petitioner filed "Appellant's Request For Extension of One Day's Time to File Notice of Appeal" stipulating "excusable neglect" and "good cause" which eventually was denied by "ORDER" (App. 18) entered September 12, 1989, by U.S.D.C. Presiding Judge Ken Hoyt. Petitioner still could not obtain from Court Reporter the January 17, 1989, Transcription of Statement of Facts although the June 2, 1989, Transcription of Statement of Facts by that particular Court Reporter had been promptly provided Petitioner for his "Appeal to the Fifth Circuit Court of Appeals." Numerous correspondence (App. 16) by Petitioner and Fifth Circuit court clerks, personnel, and case managers were futile and fruitless in obtaining this critical Transcription of Statement of Facts. Failure of the U.S.D.C. Clerk's Office and Court Reporter Service to follow appropriate Rules of Appellate Procedure 10, 11, and 12 rendered

the "complete record" incomplete and insufficient for Fifth Circuit Court of Appeals consideration in Petitioner's opinion. Numerous correspondence to the Fifth Circuit Court Clerk and other personnel by Petitioner was unproductive.

5. Nevertheless, on November 8, 1989, the Fifth Circuit Court of Appeals rendered its opinion (App. 13) and judgment and "REMANDED" for the entry of written reasons for the denial of Linkous' rule 4(a)(5) "Motion for Extension of Time to File his Notice of Appeal." Correspondence of November 8, 1989, from Fifth Circuit Court Case Manager to U.S.D.C. Clerk (App. 10) indicated the "case will be held in abeyance for a period of 60 days from this date pending disposition of the Remand Proceedings." On January 8, 1990, Fifth Circuit Court Chief Deputy Clerk corresponded (App. 12) with U.S.D.C. Chief Clerk requesting "please advise this office as to the present status of the Remand Proceedings in the above cause entered by this court's enclosed order of November 8, 1989." Then an "ORDER" (App. 7) ensued, dated November 22, 1989, and allegedly filed and stamped December 4, 1989, from U.S.D.C. Presiding

Judge Hoyt allegedly entering written reasons for denial of Petitioner's "Notice of Appeal" and "Request for "Extension of One Day's Time to File Notice of Appeal." The U.S.D.C. "ORDER" of December 4, 1989, relied on "Birl v. Estelle" and "Pryor v. U.S. Postal Service" and then commenced three paragraphs of personal attack on Petitioner with personally demeaning and denigrating remarks which Petitioner feels is unrepresentative of the Federal judiciary and their code of ethics and professional responsibility.

6. On January 29, 1990, (three weeks after January 8, 1990 Fifth Circuit Court Clerk's correspondence to U.S.D.C. Clerk and supposedly over seven weeks after the alleged December 4, 1989, entry of U.S.D.C. "ORDER") the Fifth Circuit Court of Appeals three-member panel entered an opinion and judgment (App. 5) dismissing all of Petitioner's appeals, stating "we conclude that the District Court did not abuse its discretion in making this determination and that we therefore lack jurisdiction over these matters." "APPEALS DISMISSED." Petitioner filed "Appellant's Request for Reconsideration" (App. 2 excerpt) of January

29, 1990, Appeals Dismissal" indicating six reasons for such relief. Petitioner's "Request for Reconsideration" was filed February 19, 1990, and on March 28, 1990, the Fifth Circuit Court of Appeals three-member panel denied Petitioner's "Request for Reconsideration" (App. I). On June 18, 1990, Petitioner filed his "Motion to Extend Time to File Petition for Writ of Certiorari" (82nd. day) and on July 21, 1990, Justice Byron White granted "Extension of Time to File Petition for Writ of Certiorari" until and including July 26, 1990.

REASONS FOR GRANTING THE WRIT

1. INTRODUCTION

The appeals of orders from U.S. Bankruptcy Court which when consolidated comprised the crux of this ultimate request by Petitioner for "Petition for Writ of Certiorari" were decisions of special importance which are in conflict with and depart from accepted and prevailing statutes and case law of other U.S. Bankruptcy Courts and other U.S. District and U.S. Circuit court rulings and prevailing opinion. Petitioner from his inception in the legal and judicial process hired excellent legal counsel to assist him; because of the controversial nature of

many issues involving Petitioner's cases and the protraction of the proceedings intentionally by many involved parties, Petitioner is now unable to secure adequate and competent counsel for lack of funds which the U.S. Bankruptcy Court will not afford him for any of his litigation in state, bankruptcy, or other federal courts. Petitioner because of his unwavering belief in the heritage of the judicial process in this country for redressing one's ills has resorted, unwillingly and lacking experience, to addressing these issues "pro se" in order that "justice may be recognized" and numerous wrongs perpetrated upon him, his family, and friends be rectified and precluded from further visitation in their lives.

The U.S. Bankruptcy Court adversary proceeding ("Peter Johnson, Trustee v. Dan Linkous, Debtor) litigates the issue of Petitioner's pension plan assets of which a rental house and its furnishings were placed with all other assets into the bankruptcy estate to be liquidated and satisfy the "real creditors." The Bankruptcy Trustee allowed this property illegally to be taken from the U.S. Bankruptcy Court to the State Court where a "State Trustee" was appointed who gave the

possession of assets to an unsecured creditor of the bankruptcy estate without leave of "362 stay" and ultimately required hundreds of thousands of dollars to reobtain a nearly half-million-dollar asset because of Trustee fiduciary irresponsibility and Bankruptcy Court apathy. Within 48 hours of an "extortion document" (App. 49) being formulated by select parties of the bankruptcy estate, the Bankruptcy Trustee capitulated to a "compromise" dismissing civil contempt and sanctions against responsible parties and not only granted them large sums of money and property but indemnified them from civil and criminal potential acts they may have committed in this process. A "compromise" hearing was demanded by creditors and Debtor and subpoenaed witnesses by Debtor and creditors were not allowed to testify and produce evidence by order of the presiding bankruptcy judge to the detriment of creditors, Debtor, and bankruptcy estate. During these proceedings, Petitioner was sanctioned for subpoenaing these witnesses without "notice, hearing, or opportunity to present evidence" and this was later ex parte changed to indicate sanctions for Petitioner being "vexatious" (App. 27). Bankruptcy

judge and trustee intimated and chilled Debtor and other creditors by fining Petitioner $100 (App. 25) for allegedly being two minutes late for one of the multiple recessed hearings over several days in this matter. The "Order on Sanctions" (App. 27) and "Nunc Pro Tunc ORDER" (App. 25) that emanated from that bankruptcy adversary "compromise hearing" are appealed with the final "Agreed Order" (App. 33) emanating from the "compromise hearing." This was not an "Agreed Order" as no one but the principals involved in the illegal activity signed the document, and without creditors, Debtor, or their attorneys participating in any of these negotiations or signing the "Agreed Order." During the hearing, an attorney for Petitioner, not remotely aware of the bankruptcy proceedings, was made to sit day-by-day through the proceedings after being sworn in and detained day-by-day by the bankruptcy judge, even though this attorney had no knowledge of, participation in, and was never requested to participate in any of these proceedings; this continued harassment of Petitioner through threats and intimidation to Petitioner's counsel, is another reason why Petitioner has difficulty in maintaining

counsel who would attempt to represent him competently and honestly. This activity resulted in the appeal of "Order for Witness Fees" (App. 45) submitted to the U.S. Bankruptcy Court and denied by its presiding judge.

The complexity and voluminous file of documents in these particular four appeals of these four bankruptcy court "orders" certainly would require nearly 50-100 pages each , for the U.S.D.C. to even "after the fact" state that the 40-page limitation was for all appeals instead of each appeal is still, in Petitioner's opinion, unreasonable and abusive.

The U.S.D.C. Clerk's Office and Court Reporting Service has been completely uncooperative and blatantly obstructive to Petitioner and his past counsel in attempting to fulfill Appellant requirements to have these appeal issues adjudicated on their merits. The "Witness Fee Appeal Order" was timely and appropriately perfected but was "lost" by the U.S.D.C. Clerk's Office and its appeal file had about 10 totally unrelated documents from bankruptcy main case, adversary cases, other appeal cases, and other unrelated court matters in its file

without any documents remotely pertaining to the "Witness Fee Appeal." Numerous attempts by Petitioner to rectify this were unproductive. A bankruptcy document filed in bankruptcy court was adjudicated by the U.S.D.C. presiding judge and dismissed with final judgment rendered indicating it was the "Witness Fee Appeal," (App. 46) which it obviously was not. This embarrassing and incriminating tactic by the U.S.D.C. presiding judge, in Petitioner's opinion, is a compelling reason for the U.S.D.C. presiding judge to deny Petitioner access to the courts to have his appeals adjudicated on their merits but be dismissed on misrepresented and even falsified procedural and administrative tactics.

Petitioner believes that the reputable federal judges are harmed by this most blatant and egregious wrongful behavior of high profile in this community. This does not serve the best interest of justice and only accelerates the bitterness and cynicism of the average public who are aware of this being allowed to occur without our responsible higher courts addressing this issue and preventing future occurrences.

On Petitioner's filing "Notice of Appeal" of U.S.D.C. "ORDER" (App. 20) of dismissal of all Petitioner's appeals, he was allegedly (30-day time period) one day late in filing the "Notice of Appeal" due to the extreme confusion involving these numerous matters which have been in several judge's courts and have been terminated at different times, although supposedly previously "consolidated." Petitioner contends that the U.S.D.C. presiding judge erred in generically denying Petitioner's "Extension of One Day's Time to File Notice of Appeal" without the written reasons substantiating such harsh and prejudicial decision. Petitioner contends the merits of these appeals are so strong and critically important and that the great amount of time and money that has been expended in these matters should not be so lightly and cavalierly disposed of. Petitioner contends that the Fifth Circuit Court of Appeals should not have acted on any U.S.D.C. appeal until the "complete record" was assembled and transmitted according to the F.R.A.P. Rules 10, 11, and 12. The obvious refusal of one court reporter to provide a critical Transcription of Statement of Facts of one of the hearings made decisions by the

U.S.D.C. and Fifth Circuit Court of Appeals predicated on incomplete and insufficient information. The Transcription of Statement of Facts was not provided Petitioner (App. 24) until after the final dismissal "ORDER" (App. 1) of the Fifth Circuit Court of Appeals was rendered in March 1990.

Petitioner contends it is required behavior of most attorneys and judges to discriminate against "pro se" litigants and actually hold them to a more strict and rigid standard than they do their colleagues. It is in the best interest of commerce, business, and the legal profession and for "control" of litigants and their counsel for most judges to want no "pro se" litigants or "average citizens" in their courts regardless of their sincerity, competency, or principled meritorious issues addressed. Petitioner feels this treatment of the appeals by the U.S.D.C. and Fifth Circuit Court of Appeals could not pass the "smell test" if adequately scrutinized and evaluated. Petitioner has undying respect for the judicial process of this country and will champion its cause for the people of this country which it should be serving in "the best interests of justice."

2. THE FIFTH CIRCUIT COURT OF APPEALS DECISION TO DENY PETITIONER'S "RECONSIDERATION" OF PETITIONER'S "NOTICE OF APPEAL" AND "REQUEST FOR EXTENSION OF ONE DAY'S TIME" BY INDICATING IT LACKED JURISDICTION OVER THOSE MATTERS IS IN CONFLICT WITH AND HAS DEPARTED FROM THE PREVAILING THOUGHT AND INTERPRETATION OF APPLICABLE STATUTES AND CASE LAW ALLOWING 60 DAYS FOR FILING "NOTICE OF APPEAL" WHEN U.S. GOVERNMENT OFFICIALS ARE INTRICATELY INVOLVED IN THE MATTERS APPEALED FROM U.S.D.C. TO CIRCUIT COURT OF APPEALS

9 Moore's Federal Practice, Section 204.10, states "if the United States or an officer or agency thereof is a party in civil case, the Notice of Appeal is to be filed within 60 days of the date of the entry of the judgment or order appealed from;" further, "the District Court may extend the time for appeal upon a showing of good cause or excusable neglect." Further, it is "unjust to allow additional time to the United States while denying it to other parties in the case, the rule gives all parties 60 days." This applies when the United States has been "an active party." This reflects F.R.A.P. 4(a). a U.S. official can't participate in a personal role, as an agency review or after leaving or first presenting themselves in a case. In U.S. v. American Society of Composers (CA2d 1964) "the 60 days is unequivocally allowed to all parties"

and not "be merely construed to foreclose appeals" as in Rochester Methodist Hospital v. Traveller's Insurance Company (CA 8th, 1984) and In Re Paris Air Crash of March 3, 1974 (CA 9th1978). In these appeals, the Bankruptcy Trustee is the suing plaintiff in the adversary proceeding which gives rise to these appeals and has a definite intricate interest and therefore as Judge Friendly's view, states "fixing 60 days in cases to which the government is a party should be read exactly as it is written" is the prevailing opinion. In Hare v. Hurwitz, clarification as to who is an officer of the United States for purpose of the 60-day period is addressed. In Wallace v. Chappell, it does not follow that Rule 4(a) should be "narrowly construed to foreclose appeals." In the matter of Combined Metals Reduction Company, Debtor, "the U.S. should not be deemed a party for purposes of F.R.A.P. 4(a), unless it is a participant in the particular controversy which lead to the appeal;" in this particular case, the Trustee was the suing plaintiff in the adversary proceeding against Defendant and Appellant and now Petitioner Linkous and adamantly opposed at every level Petitioner's attempts to adjudicate these

issues even on appeal and has filed motions to dismiss and otherwise prejudice and harm Petitioner Linkous. In U.S. v. McKnight, the U.S. participating in Section 2255 motions is placed under the 60-day appeal time; In Re Hoag Ranches, Debtor was not entitled 60 days because opposition was privately owned and not a federal agency. In Michaels v. Chappell, Federal Bureau of Narcotics personnel, using excess of their authority are sued in individual capacity, not as U.S. officials. In Gribble v. Harris, the 60-day delay is both mandatory and jurisdictional, as it would be inequitable to expand the period for government and not private parties involved in litigation; F.R.A.P. 4(a)(1) provides 60-day notice when U.S. or officer or agency thereof is a party.

In Petitioner's case, the Trustee is the Defendant and Appellee and now Respondent and has been intricately involved adversely to Petitioner, and the 60-day period for filing "Notice of Appeal" should apply to both Petitioner and to Respondent.

3. THE FIFTH CIRCUIT COURT OF APPEALS PREMATURELY CONSIDERED AND "REMANDED" TO U.S.D.C. PETITIONER'S "REQUEST FOR EXTENSION OF ONE DAY'S TIME" TO ENTER WRITTEN REASONS FOR THE U.S.D.C. "GENERIC DENIAL" OF PETITIONER'S "APPEAL AND REQUEST FOR EXTEN-

SION" BEFORE F.R.A.P. 10, 11, AND 12 COULD BE COMPLIED WITH BY U.S.D.C. CLERK'S OFFICE TO ENSURE PREJUDICE AND DAMAGE TO PETITIONER'S MATTERS ON APPEAL AND TO CONTINUE THE SUBTERFUGE OF ADDRESSING A "REQUEST FOR EXTENSION OF ONE DAY" WITH DISREGARD TO THE "APPEAL" REFUTES PROCEDURAL, ADMINISTRATIVE, AND TECHNICAL PROPRIETY

F.R.A.P. 10, 11, and 12 cover the assembly and transmission of the record on appeal from U.S.D.C. to Fifth Circuit Court of Appeals and should be complied with. In this case, the January 17, 1989, Transcription of Statement of Facts of a critical hearing was never provided Petitioner, even after numerous written urgings and with assistance of Fifth Circuit Court clerk and case manager personnel. Therefore, the "file" is incomplete and cannot be transferred as such and should preclude Fifth Circuit Court of Appeals from taking action on any "Notice of Appeal" or other activity in case until said record is complete and procedure adhered to. F.R.A.P. 11 applies to the failure of the clerk's office to assemble a complete file, including the court reporter's Transcription of Statement of Facts before certifying or transmitting such to Fifth Circuit Court of Appeals to commence participation in U.S.D.C. "ORDER" appealed by Petitioner. "The steps in the assembly, transmission, and filing

of the record are governed by Rules 10, 11, and 12" as per 9 Moore's Federal Practice, Section 210.03; F.R.A.P. 10(a) defines the composition of the record on appeal and F.R.A.P. 10(b) prescribes the Appellant's duty to order the transcript of hearings from court reporters whose burden was met by Petitioner but intentionally refused by the Court Reporter and Clerk's Office of U.S.D.C. F.R.A.P. 11(a) describes Appellant's duty to transmit record to Court of Appeals which was repeatedly obstructed in this case by the clerk's office and court reporter's service. Fifth Circuit Court of Appeals Rules 11.1 and 11.2 attempt to restate and amplify duties of the District Judge, his Court Reporter, and his Clerk in specific violations of preparing and transmitting the record on appeal. F.R.A.P. 11(c) requires parties to stipulate for District Court to retain parts or all of record unless circuit court orders otherwise. No due process order of the district court for retention of part or all of the record has been issued as required by F.R.A.P. 11(e). F.R.A.P. 12(b) and F.R.A.P. 31 addressed the briefing schedule checkpoints and commencement.

F.R.A.P. 11, as amended in 1979, imposes no duty on the Appellant to see that the record is transmitted (partially or completely) within any fixed time and eliminates all motions for extension of time for transmissions. The transmission of the record under the amended rule is the clerk's work, and dereliction in prompt transmission is a matter of judicial administration (9 Moore's Federal Practice, Section 211.05).

In Miller, Wright, & Cooper, Federal Practice and Procedure, Section 3950 at p. 360 indicates F.R.A.P. 3 and 4 combine to require "Notice of Appeal" be filed with clerk within time prescribed for taking appeal. This is mandatory and jurisdictional in nature (U.S. v. Robinson) but "timely" filing is not inherently or necessarily jurisdictional and "can be relaxed by the court in the exercise of its discretion when the ends of justice shall require" (Schacht v. U.S.). Under F.R.A.P. 26(b) courts of appeals are forbidden from enlarging the time for filing the "Notice of Appeal." Only upon "a showing of excusable neglect" can the district court extend time for a period not to exceed 30 days from the expiration of the time otherwise prescribed. Just as the various courts

rendered differing opinions regarding extension of time to file appeal, so have some varied their "showing of excusable neglect" criteria. Strict and stringent standards must be applied, but only if it is harmful to one party or delays or otherwise encumbers the case; in Petitioner's case, the one day extension requested when 30-day notice rule was thought in effect would not, in Petitioner's mind, be in any way detrimental to any parties or a delay in this case's adjudication. Petitioner contends that this "generic denial" by the U.S.D.C. Presiding Judge indicated his desire to not see the "best interests of justice served" but to easily terminate an undesirable case. Some district courts are permissive regarding the circumstances surrounding an extension and in Feder Line Towing Service, Inc. v. Toledo P.&W.R.R. Co. and Babicheb Cower, mistaken belief as to time of filing notice of appeal was held to constitute "excusable neglect" in those cases. A permissive reading of extension of time is seen in Stirling v. Chemical Bank. Petitioner realizes the requirement of diligence in prosecution of an appeal is necessary but feels he has more than met the burden and threshold for this

throughout the case's evolution to its current appellate state. In Davis v. Page, there is an indication that the "standard should be interpreted flexibly" as to extension of time for filing notice of appeal upon showing "good cause." Petitioner contends his "Request for Extension of One Day Time" delineated "sufficient good cause" and "excusable neglect" to surpass the threshold for approval of that "extension." In Campos v. Lefevre, a "naked" Notice of Appeal was not considered a motion for extension of time to appeal, but stipulated it was unduly harsh to dismiss an appeal because of untimely notice. In Shah v. Hutto, dissenting Judge Haynesworth argued in favor of more flexible interpretation of the timeliness of filing notice of appeal. With the 1979 amendments to F.R.A.P. 4, along with Campbell v. White and Pryor v. Marshall, good cause and excusable neglect must be shown for extension of time but in pro se situations, it is desireable for the clerk to suggest or advise whether his notice is untimely and how to remedy that. In determining whether a party had reasonably performed all that he could to perfect an appeal timely as stipulated in Falon v. U.S., Petitioner contends he has consistently

more than met his burden and threshold in diligently and vigilantly monitoring and prosecuting this case without the indifference or intentional neglect. Even in Business Forms Finishing Service, Inc. v. Carson, the appeal was dismissed for failure to file timely after an eleventh extension of time; this obviously is an unusual example of tolerance, but nowhere compares to Petitioner's one day variance from the 30-day filing rule.

On October 11, 1982, Fifth Circuit Judicial Counsel adopted Court Reporter Management Plan, supervising court reporters in relationship with litigants, hopefully to preclude obstructions to the appeal process. Pryor v. U.S. Postal Service, reviews the status of untimely notice of appeal filing but does state that a convincing record of dilatoriness or contumaciousness should be shown before imposing harsh sanctions of dismissal with prejudice without first employing lesser sanctions. Petitioner contends it is disturbing that with intentional or apathetic counsel neglect, culminating in untimely notice of appeal filing, that only recourse for appealing litigant is to sue past legal counsel without ability to preserve merits of case to be appealed. In Birl v. Estelle, pro se

status does not confer extension of ordinary jurisdictional requirements of timely filing and that unique and excusable neglect must be shown is its hallmark. One saving grace is Haines v. Kerner, wherein if liberal construction of properly filed pleadings is considered an enhanced right, then more flexibility in timeliness might be utilized by the district court. In "Appeals to the Fifth Circuit" (Issue 4, 1989), the court speaks harshly of avoiding the merits "on the basis of such mere technicalities" as stipulated in Foman v. Davis. The court shows unwillingness to deny appeal because of technical deficiency in pleading as in Kicklighter v. Nails by Jennee. In Cole v. Tuttle, the result seems unduly harsh and out of keeping with the spirit of the rules when considering merits of case versus rigid adherence to timeliness standards. The Fifth Circuit has been, on occasion, quite lenient in reviewing the district court's judgment of excusable neglect therein remanding an untimely appeal for the district courts initial judgment of this question. When notice is untimely filed, the appeals court has no jurisdiction. Thus, the court must determine the timeliness of an appeal even if the parties fail to raise the

issue, as in U.S. v. Golding. As a general matter, the district court is without jurisdiction to proceed further on a case until the mandate of the court of appeals is issued after filing a notice of appeal, but district court can take actions to correct clerical mistakes, as F.R.C.P. 60(a); also, Turner v. HMH Publishing Company. Extension of time for an appeal has also been found appropriate to rectify clerical errors, such as U.S. v. Miller. The district court should have the power to permit notice to be filed out of time in extraordinary cases where injustice would otherwise result (advisory committee note). Often the interests of ruling on a motion on the merits outweighs the interest in orderly procedure and in the finality of judgments as in Smith v. Jackson Tool & Dye, Inc.

F.R.A.P. 3(b) prescribes procedure for consolidating appeals and can occur upon motion of parties or courts on motion. The appeals must be sufficiently similar or identical to allow them to be consolidated or else this could prejudice one of the litigating parties, especially if stringent other requisites are placed upon one of the litigants (Harcon Barge Co. v. B&G Boat Rentals, Inc.)

Petitioner contends that the failure of the clerk and court reporting service at the U.S.D.C. to provide the critical January 17, 1989, Transcription of Statement of Facts and further failure of compliance with F.R.A.P. 10, 11, and 12, should preclude the Fifth Circuit Court of Appeals from acting until such record is complete and procedural requisites met. Petitioner contends that if the 30-day rule was invoked for filing "Notice of Appeal," that the one day extension requested is reasonable in light of the circumstances of this particular case and especially in light of the Herculean effort by Petitioner heretofore to address all issues as complex and voluminous as they are in order to preserve the merit in order for appropriate adjudication by the appeals court. Petitioner still contends that the 60-day rule for a government official applies on the appeal, and therefore, should not have affected the filing of the "Notice of Appeal" on the 31st. day and should have allowed for the orderly progression of F.R.A.P. 10, 11, and 12 for completion in transmittal of record and docketing of such appeal filed by Appellant's "Notice of Appeal."

4. THE FIFTH CIRCUIT COURT OF APPEALS ABUSED ITS DISCRETION IN DISMISSING THE "RE-

QUEST FOR RECONSIDERATION" OF PETITIONER'S ATTEMPT TO REINSTATE WRONGFUL DISMISSAL ON TECHNICALITY AND PROCEDURE WHICH WERE MISREPRESENTED BY U.S.D.C. CLERK'S OFFICE AND PRESIDING JUDGE TO HIDE THE OVERWHELMING MERIT OBVIOUS IN THESE APPEALS WHICH WERE EMBARRASSING AND INCRIMINATING BY THEIR OBVIOUS PREMEDITATED ADMINISTRATIVE AND PROCEDURAL MISHANDLING DEFECTS

Petitioner contends that the overwhelming merit of the issues of this case and the blatant mishandled procedural and administrative aspects of the appeals considered far outweigh any possible procedural, technical, or other administrative rationale that might arise from unreasonable prejudice and bias against Appellant by the parties involved. To deprive a Petitioner and Appellant of his right to appeal this extremely controversial case under the foregoing circumstance of total laxity and probable malice by the U.S.D.C. clerks' and Fifth Circuit Court of Appeals clerks' general policy, practice, and custom is contrary to prevailing circuit courts intent to "serve justice" by granting appeals of overwhelmingly meritorious issues, especially here in light of the 60-day rule applying to government officials for filing "Notice of Appeal." Petitioner brought this up as one of the six issues on his "Request for Reconsideration" filed at the

Fifth Circuit Court of Appeals as Reason 2 for reconsideration. Petitioner states that under Reason 3 and 4, in this "Request for Reconsideration" of the Fifth Circuit Court of Appeals, the numerous blatantly and incompetently mishandled administrative and procedural aspects of these appeals and the hallmark signing a dismissal order on a non-existent appeal which consisted of a bankruptcy document unrelated to the original "Appeal" is so disgraceful as to influence a U.S.D.C. judge to dismiss the appeals so they cannot be considered on their merit for fear of embarrassment and/or incrimination. Petitioner contends that this case has come from an extensive bankruptcy case which has been pending over six years and is so voluminous and complex as to test the patience of Job and the reticent altruism of Tolstoy. Petitioner contends that the handling of the consolidation of appeals because of "co-mingled and unintelligible appeal files" is a decision that prejudiced and harmed Petitioner in filing his appeal brief in this matter. The intentional misrepresentation in the dismissal order by the U.S.D.C. judge of these appeals indicates the "bad faith" and potential malicious nature of the

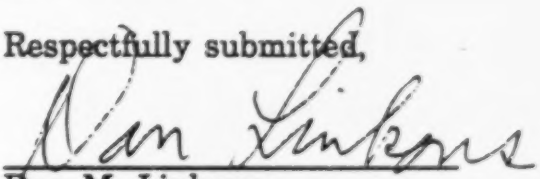
U.S.D.C. presiding judge in his decisions to dismiss appeals and extensions of time filed by Petitioner. This, combined with the sardonic and debasing criticism of Petitioner by U.S.D.C. presiding judge in his "entry of written reasons of denial" of Petitioner's "Notice of Appeal" and "Request for Extension of One Day's Time to File Notice of Appeal," is further proof of the prejudice and bias of the U.S.D.C. presiding judge against Petitioner Linkous.

The Fifth Circuit Court of Appeals' treatment of Petitioner's reconsideration compounds the injustice of the U.S.D.C. judge and U.S.D.C. clerk's office's negligence, apathy, intentional destruction of certain litigant's appeals, and predetermined assistance in "avoidance" of certain appeals cases.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that his Petition for Writ of Certiorari be granted, that the judgment of the court below be reversed, and that the case be remanded to the court below for further proceedings and trial.

Respectfully submitted,



Dan M. Linkous
Petitioner, pro se
1526 Kingwood Drive
Medical Clinic-Market Square
Kingwood, Texas 77339
713/358-6838

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 2913
USDC No. CA-H-87-2950

IN THE MATTER OF DANNY M. LINKOUS,

Debtor.

DANNY M. LINKOUS, M.D.,

versus

Appellant,

PETER JOHNSON, Trustee,

Appellee.

Appeals from the United States District Court
for the Southern District of Texas

Before REAVLEY, KING, and DAVIS, Circuit Judges.

BY THE COURT:

The motion of Dan M. Linkous M.D., for reconsideration is DENIED.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 2913
USDC No. CA-H-87-2950

IN THE MATTER OF: DANNY M. LINKOUS,
Debtor.

DANNY M. LINKOUS, M.D.,
Appellant,

versus
PETER JOHNSON, Trustee,
Appellee.

Appellant's Request for Reconsideration of January 29, 1990, Appeal Dismissal of Above-Captioned Appeal to U.S. District Court from Bankruptcy Court in Houston Southern District of Texas

To the Honorable Court:

Dan M. Linkous, M.D., appellant, files this "Appellant's Request for Reconsideration of Appeal Dismissal of January 29, 1990" and in support of this would show the following:

SUMMARY OF REASONS

I. Appellant Linkous is an inexperienced pro se litigant who thought the 30-day limit applied on his "Notice of Appeal" and "accidentally" miscounted and mismarked his calendar by one day on filing the "Notice of Appeal."

II. Appellant Linkous contends that because the United States Trustee in bankruptcy in his official capacity representing the United States government and acting through himself and his attorney, have consistently, intentionally and persistently opposed and attempted to obstruct the appeal of Appellant Linkous in the U.S.D.C. and at the Fifth Circuit Court of Appeals, states that the "60-day rule" for "Notice of Appeal" under 28 U.S.C. 4(a)(1), F.R.A.P. applies and therefore, makes the "Notice of Appeal" filed by Appellant on July 27, 1989, a "timely" filed "Notice of Appeal" and to be dismissed via "denial of granting one day extension of time to file appeal" by Judge Hoyt is improper.

III. Appeal labeled 88-1346 by the U.S.D.C. was a "Witness Fee Appeal" but the appeal file contained numerous different pleadings and the actual document that Judge Hoyt signed an Order and entered concerning this appeal was a "bankruptcy pleading" and to dismiss 88-1346 because of two "perceived" technical mistakes in the appeal of 87-2950 or to effect the appeal of 88-1346 by the Court's dismissing the "Notice of Appeal" of the consolidated cases dismisses an appeal which

was never considered by Judge Hoyt or apparently which he had no jurisdiction or abuse his discretion in rendering a decision on.

IV. The blatant intentional and/or negligent and incompetent administrative handling of these appeals from bankruptcy to U.S.D.C. by the U.S. District Clerk's office and the clerical and legal staff of Judge Hoyt and/or Judge DeAnda creates the definite appearance of impropriety, possible civil illegality, and potential criminality in trying to "sweep under the rug" and "cover up" these matters so that these appeals can be dismissed and not brought to the forefront on their merit.

V. Appellant's timely filed reconsideration of Judge Hoyt's dismissal of Appellant's Notice of Appeal and Extension of Time to File Appeal would maintain the jurisdiction in the U.S.D.C. and not with the Fifth Circuit Court of Appeals, therefore, creating rationale for withdrawing "Dismissal Order" of 1/29/90 by the Fifth Circuit Court of Appeals.

VI. Appellant's "Second Notice of Appeal" filed timely September 28, 1989, in response to Judge Hoyt's Order allegedly signed September 8, 1989, and allegedly

entered September 12, 1989, should perfect timely the Appellant's appeal of the inadequate explanation by Judge Hoyt and his legal clerk's rationale for dismissal of Appellant's "First Notice of Appeal" (which did not address any of the Appellant's real reasons and issues which Judge Hoyt was provided time to "explain away" potential abuse of discretion and which Appellant Linkous feels was not accomplished.

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 2913
USDC No. CA-H-87-2950

IN THE MATTER OF DANNY M. LINKOUS,
Debtor.

DANNY M. LINKOUS, M.D.,
Appellant,

versus

PETER JOHNSON, Trustee, Appellee.

Appeals from the United States District Court
for the Southern District of Texas

Before REAVLEY, KING, and DAVIS, Circuit Judges.

BY THE COURT:

On November 8, 1989, we entered an order remanding this case to the district court for the entry of written reasons for the denial of Linkous' motion for an extension of time to file his notice of appeal. On December 4, 1989, the district court determined that Linkous' motion did not set forth excusable neglect or good cause as required by Fed. R. App. P. 4(a)(5). We conclude that the district court did not abuse its discretion in making this determination and that we therefore lack jurisdiction over these matters.

APPEALS DISMISSED.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: DANNY M. LINKOUS,		
Debtor-Appellant,	§	
VS.	§	CIVIL ACTION
	§	NO. H-87-2950
PETER JOHNSON, TRUSTEE,	§	
Defendant-Appellee,	§	

ORDER

The above-referenced cause has been remanded to this Court from the Fifth Circuit Court of Appeals for the entry of written reasons for the denial of appellant's motion for an extension of time to file his notice of appeal.

The Court finds that appellant's request for an extension of time did not set forth excusable neglect or good cause as required by F. R. App. P. 4(a)(5). The excusable neglect standard is intended to be a strict one, and no unique circumstances are presented to justify a

finding of excusable neglect. *Birl v. Estelle*, 660 F.2d 592 (5th Cir. 1981); see also *Pryor v. U.S. Postal Service*, 769 F.2d 281 (5th Cir. 1985).

In his request, appellant rambled on with a myriad of excuses, which are summarized as follows: pro se representation due to lack of money and abandonment by attorney; appellant is engaged pro se in several other lawsuits simultaneously which are time consuming; false incarceration, for which no proof thereof is offered and no time period set forth; mismarking the date the notice of appeal was due; and one-day extension is not unreasonable.

One who proceeds pro se is held to the same knowledge and understanding of the established rules and procedures as one who is represented by counsel. Pro se status does not permit an extension of the requirement of timely filing. *Birl*, 660 F.2d at 593.

There is no indication in the record that appellant received the order denying his motion for reconsideration in a timely manner. Further, appellant is a medical doctor who is and has been engaged in voluminous litigation. As a result, it is clear that he is of, at least,

normal intelligence and knows his way around the courthouse.

None of the above reasons standing alone or together warrant an extension of time to file the notice of appeal.

SIGNED this 22nd. day of November, 1989.

/s/
KENNETH M. HOYT
United States District Judge

APPENDIX E

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

November 8, 1989

Mr. Jesse E. Clark, Clerk
U.S. District Court
515 Rusk Ave., Rm. 5300
Houston, TX 77002

No. 89-2913 Danny M. Linkous v. Peter Johnson

(DC# CA-H-87-2950)

Dear Mr. Clark:

Enclosed is a certified copy of an order this date entered by the Court in the referenced case which is self-explanatory.

Returned herewith is the four-volume record on appeal. When it has served your purpose, please return same to this office together with any supplemental record that may be prepared.

This case will be held in abeyance for a period of 60 days from this date pending disposition of the remand proceedings.

Please acknowledge receipt on the attached copy of this letter.

Very truly yours,

GILBERT F. CANUCHEAU, Clerk

By:_____
Rosalie C. Varino
Case Manager

RCV:lmc
encls.
cc: Hon. Kenneth M. Hoyt

Mr. Dan M. Linkous
Mr. Charles E. Long

APPENDIX F

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

January 8, 1989

Mr. Jesse E. Clark, Clerk
U.S. District Court
515 Rusk Ave., Rm. 5300
Houston, TX 77002

No. 89-2913 Danny M. Linkous v. Peter Johnson

(DC# CA-H-87-2950)

Dear Mr. Clark:

Would you please advise this office as to the present status of the remand proceedings in the above cause entered by this Court's enclosed order of November 8, 1989.

Sincerely,

GILBERT F. CANUCHEAU, Clerk

By:_____
Richard E. Windhorst,Jr.
Chief Deputy Clerk

REW:lmc
encls.
cc: Mr. Dan M. Linkous
Mr. Charles E. Long

APPENDIX G

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 2913
USDC No. CA-H-87-2950

IN THE MATTER OF DANNY M. LINKOUS,

Debtor.

DANNY M. LINKOUS, M.D.,

Appellant,

versus

PETER JOHNSON, Trustee,

Appellee.

Appeals from the United States District Court
for the Southern District of Texas

Before REAVLEY, KING, and DAVIS, Circuit Judges.

BY THE COURT:

This Court must examine the basis of its jurisdiction on its own motion if necessary. Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987). FEderal Rule of Appellate Procedure 4(a)(1) requires that the notice of appeal in a civil action be filed within thirty days of entry of judgment. In this case the district court dis-

missed Danny M. Linkous' bankruptcy appeal on June 5, 1989. On June 18, 1989, Linkous filed served a motion for reconsideration. As the motion was served within ten days of entry of the district court's order, it must be treated as a timely Fed. R. Civ. P. 59(e) motion. See Harcon Barge Co. v. D&G Boat Rentals, Inc., 784 F.2d 665, 667 (5th Cir.) (en banc), cert. denied, 479 U.S. 930 (1986). Therefore, pursuant to Fed. R. App. P. 4(a)(4), the time for filing the notice of appeal began to run from entry of the order disposing of the motion. The district court denied Linkous' motion for reconsideration on June 26, 1989, and accordingly, the final day for filing a timely notice of appeal was July 26, 1989. Linkous' notice of appeal, filed July 27, 1989, is not timely.

Federal Rule of Appellate Procedure 4(a)(5) provides that a district court may extend the time for filing a notice of appeal upon showing of excusable neglect if the appellant moves for such an extension within thirty days after the expiration of the initial thirty day time for appeal. On July 28, 1989, after the time for appeal had run but within the time allowed under Rule 4(a)(5) for a showing of excusable neglect, linkous filed a "re-

quest for extension of time of one day to file his notice of appeal." We construe this motion as a motion under Rule 4(a)(5) to file and out of time appeal for excusable neglect. The district court denied Linkous' motion without giving written reasons. This Court cannot determine whether the denial of Linkous' motion was an abuse of discretion without knowing the district court's reasons.

Accordingly, this case is REMANDED for the entry of written reasons for the denial of Linkous' Rule 4(a)(5) motion for an extension of time to file his notice of appeal.

APPENDIX H

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK

November 29, 1989

Ms. Suzanne Foret
Official Court Reporter
10220 Memorial Drive, #92
Houston, TX 77024

No. 89-2913 Danny Michael Linkous v. Nancy Linkous

(DC# CA-H-85-6693) (BKCY# 85-03578-H2-5)

Dear Ms. Foret:

Enclosed is a copy of appellant's transcript order form directed to your attention for the preparation of a transcript for the referenced case.

Inasmuch as we have not received your acknowledgment of this purchase order for the transcript in this case. we are assuming that the necessary financial arrangements have been made by the appellant for the preparation of this transcript and accordingly are fixing a period of 30 days from this date for the filing of same with the District Court Clerk. If this assumption is incorrect, please advise us at once in writing, and we will adjust the filing date accordingly.

Thanking you for your attention, I remain

Very truly yours,

GILBERT F. CANUCHEAU, Clerk

By:_____
Rosalie C. Varino
Case Manager

REW:lmc
encls.
cc: Mr. Dan M. Linkous

Mr. Charles E. Long
Mrs. Lynette Ehler, Manager

APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: DANNY M. LINKOUS,		
Debtor-Appellant,	§	
VS.	§	CIVIL ACTION
	§	NO. H-87-2950
PETER JOHNSON, TRUSTEE,	§	
Defendant-Appellee,	§	

ORDER

Having come on for consideration appellant's request for extension of time of "one day" to file in "Notice of Appeal" in above captioned cause, it is the opinion of the Court that this be ~~granted~~/denied.

/s/
KEN HOYT
U.S. District Judge

Signed this 8th day of September, 1989

APPENDIX J

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:		
DANNY M. LINKOUS,	§	
	§	
Appellant,	§	
	§	CA NO. H-87-2950
	§	(HOYT)

ORDER

Having come on for consideration Appellant's Linkous's request for reconsideration of the order dismissing the appeals of H87-2950, it is the opinion of the Court that this be ~~granted~~/denied.

/s/
JUDGE KEN HOYT
United States District Judge

Signed this 21st. day of June, 1989

APPENDIX K

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: DANNY M. LINKOUS,		
Debtor-Appellant,	§	
VS.	§	CIVIL ACTION
	§	NO. H-87-2950
PETER JOHNSON, TRUSTEE,	§	
Defendant-Appellee,	§	

ORDER

Came on for consideration the Motion of Peter Johnson, Trustee, Appellee, To Dismiss Appeals and it appearing that the record of these consolidated appeals demonstrates that the Appellant has not diligently prosecuted any of them.

Moreover, the Appellant has failed to comply with the Court Order of January 17, 1989 to designate the record on or before January 26, 1989 and to prepare and file a brief on or before March 7, 1989 (extension grant-

ed to March 28) not to exceed 40 pages. Appellant has failed in both regards.

It is therefore,

ORDERED that the Appellant's designation of record and brief are stricken and the consolidated appeals are DISMISSED in their entirety.

SIGNED this 2nd. day of June, 1989.

/s/
KENNETH M. HOYT
United States District Judge

APPENDIX L

AFFIDAVIT OF FACT

STATE OF TEXAS §
§
COUNTY OF HARRIS §
§

BEFORE ME, the undersigned authority, on this day personally appeared Mike Parker, known to me to be the person whose signature appears hereinafter, who, after being by me duly sworn, stated upon his oath as follows:

"My name is Mike Parker. I am over the age of 21 years and an fully able and competent to make and give this affidavit. I am the owner of Humble Express Couriers, Inc.

The 1/26/89 courier ticket delivered by Humble Express Couriers, Inc. (Exhibit A) to Woodard, Hall & Primm, was Dr. Linkous' handwritten Designation of Record in appeal case no. 87-2950.

/s/

SUBSCRIBED AND SWORN TO Before me on this 25th day of September, 1989.

/s/
NOTARY PUBLIC,
STATE OF TEXAS

MY COMMISSION EXPIRES: 10/22/92

PRINTED NAME OF NOTARY: BONNIE TITUS

APPENDIX M

CA 85-6693 87-3860 88-1346

IN RE: DANNY M. LINKOUS

DOCKET ENTRY

Status Hearing Reporter: S. Foret

Mtn to Dismiss Appeal - Denied

John Arellana's Mtn to Withdraw - Granted

88-1346: Dismissed without prejudice

Mr. Linkous can seek relief under 87-2950 in the form of a motion

87-3860: Dismissed without prejudice Mr. Linkous directed to refile in 87-2950

On compromise and 2 orders/on Sanctions limited to 40 pages:

Appellant Briefs due 3/7/89

Response due 3/22/89

Record to be designated and served by 1/26/89 on Mr. Long

Parties to report by 2/2/89 if they have an agreed record.

APPENDIX N

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
INVOICE

NO: 87-2950
85-6693

TO: Dan Linkous, M.D.
1526 Kingwood Dr.
Kingwood, TX 77339
358-6838

NOTE MAKE CHECK
PAYABLE TO
Suzanne Foret

TRANSCRIPTS

CIVIL DATE DELIVERED: 3/29/90

IN THE MATTER OF

IN RE: DANNY MICHAEL LINKOUS

CHARGES

Ordinary	53 pp. @ 2.40 each =	127.40
Less Amount of Deposit		100.00
Total due		$ 27.20

/s/ 3/29/90
Suzanne Foret

APPENDIX O

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
DANNY M. LINKOUS,	§	CASE NO. 84-03578-H2-4
	§	CHAPTER 7
Debtor	§	
	§	
PETER JOHNSON, TRUSTEE	§	
	§	
Plaintiff	§	
	§	
VS.	§	ADVERSARY NO. 85-1046
	§	
DANNY M. LINKOUS, et al,	§	
	§	
Defendants	§	

NUNC PRO TUNC ORDER

In Houston, on June 4, 1987, came on for hearing the Motion of Peter Johnson, Trustee for Approval of Compromise and the Court finding that said hearing having been recessed for fifteen minutes, that when said hearing reconvened, Danny M. Linkous, Debtor ("Debtor") was not present, that someone in the courtroom had to locate Debtor so that the hearing could proceed and that the tardy appearance of Debtor was willful and warrants sanctions; it is therefore

ORDERED, ADJUDGED, AND DECREED that Danny M. Linkous, Debtor, is hereby sanctioned in the sum of $100.00 for being tardy for a hearing before this Court; and it is further

ORDERED, ADJUDGED, AND DECREED that Danny M. Linkous, Debtor, is hereby directed to pay said sum to Clerk of the United States District Court for the Southern District of Texas on or before 10 days after Danny M. Linkous, Debtor, receives actual notice of the entry of this Order.

Dated: August 9, 1987

/s/
R. F. Wheless, Jr.
United States Bankruptcy Judge

This order replaces this courts order of July 26, 1987 on the same subject.

/s/

APPENDIX P

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
DANNY M. LINKOUS,	§	CASE NO. 84-03578-H2-4
	§	CHAPTER 7
Debtor	§	
	§	
PETER JOHNSON, TRUSTEE	§	
	§	
Plaintiff	§	
	§	
VS.	§	ADVERSARY NO. 85-1046
	§	
DANNY M. LINKOUS, et al,	§	
	§	
Defendants	§	

ORDER ON SANCTIONS

In Houston, on June 4, 1987, came on for hearing the Motion of Peter Johnson, Trustee ("Trustee") for Approval of Compromise and the Court finding that:

1. Danny M. Linkous, Debtor ("Debtor") obtained the issuance of ten to twelve subpoenas and subpoenas duces tecum (collectively "subpoenas").

2. Debtor caused the subpoenas to be served within twenty-four (24) to forty-eight (48) hours before

said hearing even though Debtor knew the date of said hearing since April 20, 1987.

3. The subpoenas were issued without notice sufficient to permit those served to arrange their schedules for said hearing and to prepare to be witnesses and to produce the books and records requested.

4. The subpoenas were overbroad, unreasonable, and oppressive in that compliance required the production of extraordinary amounts of books and records unrelated to the contested matter before the Court.

5. Debtor caused the subpoenas to be issued and served for improper purposes, to wit to conduct discovery or to obtain documents for use in other proceedings not before this Court.

6. This Court expended much needed time to hear the motions to quash filed by some of those served and the Trustee.

7. The Debtor has knowingly and willfully abused the civil process of this court.

Initially the Court determined that Debtor should be sanctioned the sum of $10,000.00 for his abuse of civil process of this Court. This determination was prior

to the trial of the hearing on the Trustee's Application to Compromise with Nancy Linkous, the Debtor's former wife.

The Court has determined to withdraw the assessment of the $10,000.00 sanction against Debtor for the foregoing abuses and instead to sanction Debtor the sum of $10,000.00 for the foregoing abuse of process, vexatious conduct, and further, the abuses perpetrated by Debtor during the hearing on the proposed settlement as set forth below.

The hearings on the Application to Compromise took place on the following dates: April 20, June 4, June 5, June 8, June 10, and June 11, 1987. The hearings did not take the entirety of each of the aforementioned days but took a substantial part thereof.

During the hearings on the Motion to Compromise, it became apparent that Debtor, representing himself pro se, was utilizing the opportunity of the need for hearing on the Motion to Compromise to give gratification to the Debtor's vindictiveness toward his former wife, Nancy Linkous; her attorneys, Tom Henderson and

David Foltz of Sheinfeld, Maley and Kay; Peter Johnson, the Trustee; and Charles Long, Attorney for Trustee.

The Debtor is a well-educated and intelligent man, although he exhibits tendencies toward being vexatious and vindictive. In the involved hearing, which lasted literally days longer than was necessary or important tot he determination of the issues, was extended by the Debtor due to his attacks on each of the witnesses. The Debtor asked questions of each of the witnesses relating to peripheral or unrelated issues. Although he was repeatedly admonished that it was not necessary to try the entire case in order to determine whether it should be compromised and settled, the Debtor attempted to retry his divorce case and other similar unrelated issues to lengthen the hearing, obtain discovery for use in a RICO case now pending in the U.S. District Court and to abuse the witnesses or serve as a platform for the Debtor's attempt at self vindication.

The Debtor's conduct in connection with the hearing can only be described as wanton and vexatious.

Under the circumstances, it is the opinion of this Court that this Court should sanction the Debtor for

these abuses. See Hall v. Cole, 93 S. Ct. 1943 (1973); Alyeska Pipeline Service v. Wilderness Society, 421 U.S. 240, p. 258 et seq., In re Skeeter Dale Benedict, 15 B.R. 675.

As a result of the foregoing it is ORDERED, ADJUDGED, AND DECREED that Danny M. Linkous, debtor, be, and is hereby, sanctioned in the sum of $10,000.00 for his abuse of civil process of this Court and for his wanton and vexatious conduct in the hearing on the Trustee's Application to Compromise with Nancy Linkous, which resulted in a substantial increase in costs to this estate, and it is further

ORDERED, ADJUDGED AND DECREED that Danny M. Linkous, Debtor, be and is hereby, directed to pay said sum of $2,500.00 to the Clerk of the United States District Court for the Southern District of Texas as a general sanction and the additional sum of $7,500.00 to the Trustee of the bankruptcy estate of Danny M. Linkous to defray the unnecessary costs inflicted on the estate by the vexatious conduct of Danny M. Linkous (i.e., total of $10,000.00). The said $10,000.00 is o be paid by Danny M. Linkous on or

before 60 days after Danny M. Linkous, Debtor, receives actual notice of the entry of this Order.

If such payment is not timely made, judgment shall enter for such sums.

Signed this 7th day of August, 1987.

/s/
R. F. Wheless, Jr.
United States Bankruptcy Judge

APPENDIX Q

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: DANNY M. LINKOUS, Debtor PETER JOHNSON, TRUSTEE Plaintiff VS. DANNY M. LINKOUS, et al, Defendants	§ § § § § § § § § § § § § § §	CASE NO. 84-03578-H2-4 CHAPTER 7 ADVERSARY NO. 85-1046

AGREED JUDGMENT

In Houston, on June 4, 1987, came on for hearing the Motion of Peter Johnson, Trustee ("Trustee") for Approval of Compromise regarding the alleged claim and interest of Defendant Nancy Drentlaw Linkous ("Nancy Linkous") in or to the real property which is part of the subject matter of Trustee's complaint in the above-captioned adversary proceeding, at which hearing Trustee and Nancy Linkous submitted their second proposed compromise and settlement to the Court for approval by

the entry of an agreed judgment; and the Court, having considered the parties' compromise and settlement agreement, is of the opinion that it is in the best interests of the Estate of Danny M. Linkous and its creditors and that the parties' compromise and settlement should be approved and entered as an agreed judgment, that there is no just reason for delay in the entry of this agreed judgment and that therefore it shall be entered as a final agreed judgment, it is therefore ORDERED, ADJUDGED AND DECREED that:

1. Save and except as provided in this Agreed Judgment, any and all claims or interests of any nature or kind whatsoever, including but not limited to any and all homestead claims or interests, of Nancy Linkous in, to or against the real property known as 3102 Breezy Pines, Kingwood, Harris County, Texas (the "Breezy Pines Property"), are hereby forever released and discharged;

2. Nancy Linkous hereby stipulates and agrees that as of the date of the filing of the Chapter 11 case of Danny M. Linkous, any interest in or distribution from the Danny Michael Linkous M.D.P.A. Defined Bene-

fit Pension Plan (the "Pension Plan") or the Danny Michael Linkous M.D.P.A. Money Purchase Plan (the "Money Purchase Plan"), pertaining to the Breezy Pines Property to which Danny M. Linkous was entitled, was and continues to be property of the Bankruptcy Estate of Danny M. Linkous (the "Estate").;

3. Save and except as provided in this Agreed Judgment, any and all claims and interests of Nancy Linkous to any interest in, or distribution from, the liquidation of the Breezy Pines Property as property of the Pension Plan are hereby forever released and discharged;

4. Save and except as provided in this Agreed Judgment, any and all claims and interests of Nancy Linkous to any interest in or distribution from, the liquidation of the Breezy Pines Property as property of the Money Purchase Plan are hereby forever released and discharged;

5. Upon the entry of a final, nonappealable order or judgment in the above-captioned adversary proceeding determining the interest of the Estate in the net proceeds of the Breezy Pines Property, Nancy Linkous

shall receive forty percent (40%) of any such interest in the Estate. The Trustee may, at his sole option, waive the requirement of a final and nonappealable order as a precondition to distributing the interest of Nancy Linkous hereunder provided for. As used herein, "net proceeds" shall mean the gross funds received upon any sale of the Breezy Pines Property approved by this court, less any of the following:

a. real estate commissions associated with the sale of the Breezy Pines Property and approved by this Court;

b. ad valorem taxes, penalty and interest on the Breezy Pines Property of Humble Independent School District for the year 1984 paid by Peter Johnson, Trustee, in the amount of $3,050.00, and as evidenced by Transfer of Tax Lien, recorded at 048-64-0798, plus court costs and title search fees;

c. any reasonable expenses incurred by Trustee for the protection, preservation, maintenance, repair, restoration, or insurance of

the Breezy Pines Property, but not including Trustee's attorney's fees;

d. any other reasonable expenses incurred by Trustee that are incident to or part of any necessary cost of the sale of the Breezy Pines Property, but not including Trustee's attorneys' fees;

e. any claim or interest to, in, or against the Breezy Pines Property or the proceeds thereof determined by this Court to be superior to the claim or interest of the Estate;

f. any claim or interest to, in, or against the Breezy Pines Property or the proceeds thereof, other than the claim or interest of the Estate, which is determined and allowed by this Court;

6. Nancy Linkous shall receive her proportionate share of any interest earned on her share of the net proceeds described in Paragraphs 5 and 11 of this Agreed Judgment;

7. Upon the execution of this Agreed Judgment by Nancy Linkous and Trustee, Nancy Linkous simultaneously shall file a motion in the United States District Court requesting that such Court dismiss with prejudice hear appeal of the Order of this Court, dated August 21, 1986, as amended and superseded by the Order, dated October 10, 1986, authorizing the sale of the Breezy Pines Property free and clear of claims, interests, and liens;

8. Upon the execution of this Agreed Judgment by Nancy Linkous and Trustee, Nancy Linkous shall execute and deliver to Trustee a deed without warranty in a form acceptable to the title company selected by Trustee to insure title to the Breezy Pines Property, conveying any and all of her claims and interests to the Breezy Pines Property to Trustee or to the buyer of the Breezy Pines Property as the title company may direct. At such time or thereafter Nancy Linkous shall also execute and deliver any document reasonably deemed necessary by said title company to insure title to the Breezy Pines Property in accordance with the laws of the United States and the State of Texas. The deed

and any other document executed and delivered by Nancy Linkous pursuant to this Paragraph 8 shall only be recorded in the applicable public records upon the consummation of a sale of the Breezy Pines Property by Trustee approved by this Court;

9. Upon the execution of this Agreed Judgment by Nancy Linkous and Trustee, Nancy Linkous shall file a motion in this Court requesting that the Court dismiss the following motions with prejudice (if said motions have been filed):

a. Motion of Nancy Linkous to Disqualify the Trustee And His Counsel And To Impose Sanctions;

b. Motion of Nancy Linkous to grant Possession of the Breezy Pines Property During The Pendency of Appeals;

10. Upon the closing of the sale of the Breezy Pines Property approved by the Order of this Court, dated October 10, 1986, Trustee shall file a motion in this Court requesting that the Court dismiss the following motion with prejudice: Emergency Motion of Trustee

for Certificate of Civil Contempt and for Injunctive Relief;

11. Any insurance proceeds received by Trustee for any damage or loss to the Breezy Pines Property shall be included in any calculation of gross funds as set forth in Paragraph 5 of this Agreed Judgment;

12. In the event that Trustee elects to file any claim for damage or loss to the Breezy Pines Property, if requested by Trustee, Nancy Linkous shall execute a sworn affidavit, stating in unambiguous terms:

a. the condition of the Breezy Pines Property or any part thereof during any period in which she occupied said real property;

b. her lack of participation in, or knowledge of, any act causing damage or loss to the Breezy Pines Property or any part thereof;

c. her estimate of the fair value of any damage or loss of the Breezy Pines Property or any part thereof on the date of such damage or loss or on any date that insurer of the Breezy Pines Property reasonably

deems relevant to a claim for damage or loss;

13. In the event that the Court elects to disapprove this Agreed Judgment fails to become a final, nonappealable judgment or order of this Court, Nancy Linkous and Trustee stipulate and agree that:

a. nothing contained herein shall alter, impair, or waive any claim or interest that she has or may have to any of the proceeds of the Breezy Pines Property as set forth in the Order of this Court, dated October 10, 1986, or any other Order of this Court;

b. Nancy Linkous' physical removal from the Breezy Pines Property shall not alter, impair or waive any claim or interest that she has or may have to any of the proceeds of the Breezy Pines Property as set forth in the Order of this Court, dated October 10, 1986, or any other Order of this Court;

c. Nancy Linkous' execution of any document pursuant to this Agreed Judgment or as requested by Trustee shall not alter, im-

pair, or waive any claim or interest that she has or may have in the proceeds of the Breezy Pines Property as set forth in the Order of this Court, dated October 10, 1986, or any other Order of this Court;

d. any findings and conclusions of the law of this Court regarding the sale of the Breezy Pines Property free and clear of liens, claims, and interests shall not be res judicata to or collaterally estop Nancy Linkous from asserting any claim or interest that she has or may have to any proceeds of the Breezy Pines Property as set forth in the Order of this Court, dated October 10, 1986, or any other Order of this Court;

14. Nancy Linkous hereby releases and discharges Trustee and the Estate and their attorneys, agents, representatives, successors, and assigns and Trustee in his individual capacity from any act or omission related or pertaining to or arising out of the efforts of Trustee to sell the Breezy Pines Property or to obtain possession thereof. Trustee and the Estate hereby re-

lease and discharge Nancy Linkous and her attorneys, agents, representatives, successors, and assigns from any act or omission related to or pertaining to or arising out of the efforts of Nancy Linkous to oppose the efforts of Trustee to sell the Breezy Pines Property or to obtain possession of it from her;

15. Upon execution of this Agreed Judgment by Trustee and Nancy Linkous, Nancy Linkous and Trustee hereby stipulate and agree that Nancy Linkous shall no longer object to the sale of the Breezy Pines Property authorized by the Order of this Court, dated October 10, 1986, and to the transfer of any and all of her claims and interests, including but not limited to her homestead claims or interests, to or in the Breezy Pines Property to the proceeds from the sale of said real property;

16. Nothing herein shall alter, impair, or waive any claim of Nancy Linkous against the Estate arising by virtue of her divorce from Danny M. Linkous except as expressly set forth herein.

SIGNED: November 25, 1987

/s/
R. F. Wheless, Jr.
United States Bankruptcy Judge

AGREED TO AND ENTRY REQUESTED:

WOODARD, HALL & PRIMM, P.C.
BY: /s/
Charles E. Long
4700 Texas Commerce Tower
Houston, Texas 77002
(713) 221-38000

Attorneys for Peter Johnson, Trustee
SHEINFELD, MALEY & KAY
BY: /s/
David B. Foltz, Jr.
Thomas S. Henderson
3700 First City Tower
Houston, Texas 77002
(713) 658-8881

HAYNES & FULLENWEIDER
BY: /s/
Donn C. Fullenweider
4300 Scotland Street
Houston, Texas 77007
(713) 868-1111

Attorneys for Nancy Drentlaw Linkous
/s/
Nancy Drentlaw Linkous

APPENDIX R

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
DANNY M. LINKOUS,	§	CASE NO. 84-03578-H2-4
	§	CHAPTER 7
Debtor	§	
	§	
PETER JOHNSON, TRUSTEE	§	
	§	
Plaintiff	§	
	§	
VS.	§	ADVERSARY NO. 85-1046
	§	
DANNY M. LINKOUS, et al,	§	
	§	
Defendants	§	

ORDER FOR WITNESS FEES

On this _____ day of _____, 1989, the motion of James M. Murphy for reimbursement of witness and attendance fees was presented to the Court; after considering such motion, the Court is of the opinion that such motion should be in all things granted;

IT IS THEREFORE ORDERED that the sum of _____ Dollars be paid by the Clerk of this Court to James M. Murphy as witness/attendance fees.

SIGNED THIS ____ DAY OF _____, 1987

_____

UNITED STATES BANKRUPTCY JUDGE

APPENDIX S

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS - HOUSTON DIVISION

IN RE: DAN M. LINKOUS, M.D. DAN M. LINKOUS, M.D., TRUSTEE OF DAN M. LINKOUS, M.D. PENSION PLAN, DEFINED BENEFITS PLAN AND MONEY PURCHASE TRUST PLAN DAN M. LINKOUS, M.D., PRESIDENT OF HUMBLE-KINGWOOD INTERNAL MEDICINE, DAN M. LINKOUS M.D., P.A. AND ON BEHALF OF THE UNITED STATES OF AMERICA, Debtor-Appellant, VS. PETER JOHNSON, TRUSTEE, AS PRINCIPAL AND LAWYERS SURETY CORPORATION AS SURETY (POLICY NO. LSL618655) CHARLES LONG AND WOODARD, HALL & PRIMM - TRUSTEE'S ATTORNEYS AS PRINCIPAL AND LAWYERS SURETY AS SURETY Defendants,	§	CIVIL ACTION NO. H-88-1346

ORDER

On the 17th day of January, 1989, the parties in the above-referenced matter appeared before the Court of a status conference. After reviewing the record on file

and hearing the status as presented by pro se plaintiff and counsel for the defendant, the Court is of the opinion that this cause should be dismissed for lack of service.

It is therefore, ORDERED that this cause be, and the same is hereby DISMISSED without prejudice.

SIGNED this 15th day of January, 1989.

/s/
KENNETH M. HOYT
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: DAN M. LINKOUS, M.D. DAN M. LINKOUS, M.D., TRUSTEE OF DAN M. LINKOUS, M.D. PENSION PLAN, DEFINED BENEFITS PLAN AND MONEY PURCHASE TRUST PLAN DAN M. LINKOUS, M.D., PRESIDENT OF HUMBLE-KINGWOOD INTERNAL MEDICINE, DAN M. LINKOUS M.D., P.A. AND ON BEHALF OF THE UNITED STATES OF AMERICA, Debtor-Appellant, VS. PETER JOHNSON, TRUSTEE, AS PRINCIPAL AND LAWYERS SURETY CORPORATION AS SURETY (POLICY NO. LSL618655) CHARLES LONG AND WOODARD, HALL & PRIMM - TRUSTEE'S ATTORNEYS AS PRINCIPAL AND LAWYERS SURETY AS SURETY Defendants,	§	CIVIL ACTION NO. H-88-1346

FINAL JUDGMENT

For the reasons stated in the Court's Order, this case is DISMISSED.

This is a FINAL Judgment.

SIGNED this 19th day of January, 1989.

/s/
KENNETH M. HOYT
United States District Judge

APPENDIX T

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
DANNY M. LINKOUS,	§	CASE NO. 84-03578-H2-4
	§	CHAPTER 7
Debtor	§	
	§	
PETER JOHNSON, TRUSTEE	§	
	§	
Plaintiff	§	
	§	
VS.	§	ADVERSARY NO. 85-1046
	§	
DANNY M. LINKOUS, et al,	§	
	§	
Defendants	§	

MOTION TO DISQUALIFY THE TRUSTEE AND HIS COUNSEL AND TO IMPOSE SANCTIONS

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW NANCY LINKOUS, Defendant, and moves this Court to disqualify Peter Johnson, Trustee, and Charles Long, attorney to the Peter Johnson in this cause, for the following reasons:

I.

Peter Johnson and Charles Long have become emotionally, personally, and financially involved in these proceedings. Due to such involvement, they have become

belligerent, hostile, and threatening toward Nancy Linkous and her counsel, Thomas Henderson.

II.

In an over-zealous attempt to bring about the sale of the Breezy Pines Court house, the Trustee's attorney, Charles Long, has filed with this Court an "Emergency Motion for Certification of Civil Contempt and for Injunctive Relief." Such motion was filed for the improper purpose of harassing and intimidating Nancy Linkous and her counsel, Thomas Henderson. The purpose of the motion was to intimidate her into abandoning her constitutional rights of free speech and to petition the Court regarding her Homestead claim. As such, Charles Long's acts violate Rule 11 of the Federal Rules of Civil Procedure and merit the imposition of sanctions.

III.

On or about the 19th of September, 1986, Charles Long informed Thomas Henderson that he would withdraw his request to this Court - that Nancy Linkous and her counsel, Thomas Henderson, show cause why she and/or he should not be certified to the District Court to be in contempt of the Court order, dated August 21,

1986, for having intentionally and willfully attempted to circumvent same - in exchange for the execution, by Nancy Linkous, of a document in the Real Property Records of Harris County, Texas, stating that her Homestead claim has been removed from the Breezy Pines house and transferred tot he proceeds of the sale of same.

A. The advancement of this proposal by Charles Long to Thomas Henderson violated State Bar of Texas Disciplinary Rule 7-105 which provides that; [a] lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter. Since Charles Long knows or should be aware that the order which his emergency motion refers to requires the mere relinquishment of possession, his request for contempt proceedings on a non-specific order which in no way prohibits extrajudicial communications regarding her claims was brought in bad faith.

B. The offer to withdraw the emergency motion conditioned on the abandonment of Nancy Linkous' right to continue to assert her Homestead claims has

created a wedge between her and her attorney, Thomas Henderson. To protect Mr. Henderson from possible contempt findings, she would have to abandon her claim to the Breezy Pines house. Thus, this motion puts Nancy Linkous' interests at odds with those of her counsel. Since Nancy Linkous is indigent and unable to hire a new attorney, the effect of this action was to deprive her of affective counsel in the Bankruptcy Courts. Such deprivation was or should have been anticipated as the probable results of Charles Long's emergency motion.

IV.

The estate of Debtor, Danny M. Linkous, owes substantial administrative fees to the Trustee and his attorney. Since insufficient assets other than the Breezy Pines house remain to pay these fees, the Trustee and his attorney have become overly zealous in their attempts to effectuate a sale of the Breezy Pines home.

WHEREFORE, PREMISES CONSIDERED, Movant prays that upon hearing, the Trustee and his counsel be:

1. Disqualified from acting further in this action; and

2. Sanctioned for their improper attempts to harass and intimidate Movant into relinquishing her rights.

Respectfully submitted,

HAYNES & FULLENWEIDER
A Professional Legal Corporation

By:_____
Donn C. Fullenweider
SBN #07514000

ATTORNEY FOR NANCY LINKOUS
DEFENDANT AND MOVANT